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REMARKS

Claims 1-24, 26, and 30 are currently pending in the patent application. The Examiner has rejected Claims 1-2, 12-13, 16-17 and 19 under 35 USC 102(e) as anticipated by Yeo; Claims 24, and 26-30 under 35 USC 102(e) as anticipated by Inoue; Claims 4-8, 10, 14-15, 18, and 20-23 under 35 USC § 103 as being unpatentable over Yeo in view of Inoue; Claim 11 under 35 USC 35 as unpatentable over the teachings of Yeo in view of Mankovitz; and Claim 9 under 35 USC 103 as being unpatentable over the teachings of Yeo in view of Inoue and further in view of Dureau. For the reasons set forth below, Applicants respectfully assert that all of the pending claims are patentable over the cited prior art.

The present invention teaches a system, method, apparatus, and broadcast stream wherein secondary content which relates to the primary content of a broadcast stream is scheduled for cyclic delivery with the primary content. The delivery of secondary content is cyclic, as detailed on page 8 of the present Specification, which means that it is sent multiple times in the course of delivery and display of the primary content. The secondary content is first

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delivered as part of the initial broadcast, preferably before the primary content to which it pertains. Thereafter, for those viewers who might tune in late, the secondary content is cyclically broadcast or, alternatively, is rebroadcast to multiple requesting viewers or is narrowcast to individual requesting viewers. As set forth in independent method Claim 1 and independent system Claim 19, the invention comprises steps and means for obtaining secondary content which relates to the main primary content, for creating a schedule for cyclic delivery of the secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content; and for cyclically delivering the secondary content based on the created schedule.

The Yeo patent is directed to a method and apparatus for displaying a visual program summary comprised of video frames from one or more video programs available for viewing. Yeo provides a visual program summary device with a control program that extracts frames from each available video stream, discards duplicate frames, and displays a plurality of the frames in a visual program summary of "snapshots" of each video program (Col. 5, lines 24-34). The viewer may then peruse the snapshots and select a video

stream for viewing. When the viewer selects a program, the viewer's television is instructed to tune to the desired channel (Col. 8, lines 26-36). Yeo teaches two embodiments, one in which the visual program summary device is integrated into the television and one in which the visual program summary device is separate from the television. The latter embodiment may be associated with a personal computer and may additionally access programming information from the internet.

Applicants respectfully assert that the Yeo patent does not teach or suggest the invention as claimed in Claims 1-2, 12-13, 16-17 and 19. There is nothing in the Yeo patent which teaches or suggests steps or means for creating a schedule for cyclic delivery of secondary data content in a predetermined relation to the non-cyclic delivery of primary content. The Examiner has cited the teachings from Col. 9, lines 45-63 against the claim language. What Yeo teaches in Col. 9 is that the computer system may access the TV program schedule, program title, and/or rating information, "that is delivered along with the MPEG 2 encoded video information" (Col. 9, lines 56-58) and that the information "may be added to the visual program summary display" (Col. 9, lines 61-63). Accordingly, Yeo may access additional programming

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information, possibly delivered as secondary content with a primary content stream, and add it to the visual program summary. As such, Yeo may receive secondary content delivered with primary content. However, Yeo does not teach that it delivers secondary content with primary content. Yeo obtains whatever information it can access and adds it to the visual program summary. When Yeo is displaying the TV program schedule information simultaneously with the non-cyclic display of a frame of the primary content, Yeo is rendering all displayed information (schedule information as well as the snapshot) as primary content. The simultaneous display of video frames with a TV program schedule, title, and/or rating information is not the same as or suggestive of creating a schedule for cyclic delivery of secondary content data in a predetermined relationship to non-cyclic broadcasting of primary content and cyclically delivering the secondary content based on the schedule. It is simply adding content to a primary display.

Applicants again point out that the Examiner has erred in referring to the digital frames of the video program summary as "secondary content which relates to the main primary content". What is expressly taught in Col. 2, lines 37-40 of Yeo, is a "visual program display comprising a

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plurality of video frames from the captured video." Yeo is not displaying secondary content, but is displaying selected frames as the primary content. Display of portions of the primary content as primary content does not anticipate or obviate the method and means for obtaining secondary content which relates to the primary content, creating a schedule for delivery of the secondary content in a predetermined relation to the non-cyclic broadcasting of the primary content, or cyclically delivering the secondary content based on the schedule.

Applicants further note that Yeo does not provide any description of a schedule for display of its visual program summary. Yeo states that the visual program summary is displayed to the user, but never mentions how, when or where the summary is displayed to the user. At Col. 4, lines 4-8, Yeo states that the "computing device 130 generates a display signal that may be passed to the television system...[and] used to display a visual summary of available television programming". Yeo does not teach that multiple signals or streams are passed to the television for display. Yeo teaches that a single display signal is passed to the television. Further, Yeo teaches that selected visual frames are placed in a frame buffer and the "visual program

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summary display in frame buffer 250 may be displayed on a computer monitor....[or] on the viewer's television screen using the display driver". Again, Yeo does not mention more than one signal or stream, let alone the creating of a schedule for cyclic delivery of secondary content with the delivery of the frame buffer contents.

Anticipation under 35 USC 102 is established only when a single prior art reference discloses each and every element of a claimed invention. See: In re Schreiber, 128 F. 3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F. 3d 1475, 1478-1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F. 2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990) and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F. 2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Applicants note that the terms "primary and secondary content", "cyclic delivery", "non-cyclic broadcasting", and "schedule for delivery" are not found anywhere in the Yeo patent. Since Yeo does not teach or suggest creating a schedule for cyclic delivery of secondary content in a predetermined relation to the non-cyclic delivery of primary content, it cannot be maintained that Yeo anticipates the invention as claimed in independent

Claims 1 and 19 or in the claims which depend therefrom and add limitations thereto.

With regard to Claim 2, the Examiner cites the same teachings found at Col. 9, lines 45-63. Applicants contend, however, that the cited passage makes no mention of delivery of secondary content prior to delivery of primary content, let alone in conjunction with at least one successive delivery of the secondary content. Yeo only teaches simultaneous display of the program information with the visual program snapshot.

With regard to Claim 12, the Examiner concludes that the teachings found in the passage from Col. 9, lines 45-63 as well as in the passage from Col. 4, lines 15-26 anticipate primary content being delivered in an analog broadcast signal and secondary content being delivered in the vertical blanking interval (VBI). Applicants have reviewed the cited teachings and find no mention of primary and secondary content and no mention of the VBI. Clearly, the cited passages do not anticipate the claim language.

Similarly with regard to Claim 13, the Examiner cites the passage from Col. 9, lines 45-63. However, that passage does not teach or suggest a digital television broadcast stream as a transport medium for primary content and having

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an additional data stream within the digital television broadcast stream for secondary data. Yeo does not teach multiple digital streams and does not teach secondary data within a stream.

With regard to Claims 16 and 17, the Examiner has rejected the claim language as anticipated by Yeo teachings found at Col. 5, lines 37-52 and Col. 9, line 45-Col. 10, line 6. Applicants have reviewed the cited passages and find no teaching or suggestion of control information with secondary content. The cited passages describe the control program which extracts video frames for the video program summary. However, those passages make no mention of control information being communicated with secondary content.

Applicants reiterate that anticipation under 35 USC 102 is established only when a single prior art reference discloses each and every element of a claimed invention. See: In re Schreiber, 128 F. 3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F. 3d 1475, 1478-1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F. 2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990) and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F. 2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Since the Yeo patent does not teach or suggest the steps or means

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for creating a schedule for delivery of secondary data content in a predetermined relation to the non-cyclic delivery of primary content and does not teach or suggest the steps or means for cyclic delivery of secondary content based on the schedule, let alone those steps in combination with the other dependent claim features, it cannot be concluded the Yeo anticipates the invention as claimed.

With regard to Claims 24 and 26-30, the Examiner has rejected the claims as anticipated by the Inoue patent. The Inoue patent is directed to a system and method for providing data between different devices over a single data bus. Audio and video data from a television server, music data from a tune server, additional audio information from an additional audio information server, and GUI data from a GUI server can all be multiplexed at a terrestrial station and then sent via a charging server or satellite system to a single user location along the one data bus. What Inoue teaches is that the terrestrial station time multiplexes the packets for transmission (see: Col. 17, lines 12-21). At the receiving end of the Inoue system, the received content is displayed via a GUI for user selection and then recorded at the MD Recorder/Player (Col. 14, lines 36-52).

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With regard to Claims 24 and 26, Applicants contend that, while Inoue does provide visual display information as well as audio information, Inoue does not teach or suggest means for extracting control information and for handling secondary content based on extracted control information. Inoue time multiplexes the packets, thereby supplying the streams for immediate display. No control information is required to be sent with the streams since the Inoue server has time multiplexed the streams and delivered the time-multiplexed streams directly for rendering at the receiving end. Applicants respectfully assert that the Examiner is reading limitations into the Inoue patent that are not taught by Inoue. In the cited passage from Col. 12, lines 41-45, Inoue states that there may be a GUI screen. Inoue does not teach that control information accompanies a stream in order to supply instructions for a GUI interaction. The GUI interaction may be a client-based capability that has nothing to do with the incoming stream. Applicants respectfully assert that an anticipation rejection cannot be predicated on unsupported conclusions, but must find support in the express teachings of the reference. Similarly, the cited passage from Col. 18, lines 6-17 states that "GUI data utilized for a data service

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(interactive broadcast)...are logically formed". The cited passage neither teaches nor suggests that control information accompany the incoming stream. Accordingly, it cannot be maintained that Inoue anticipates the language of Claim 24.

With regard to Claim 26 which depends from Claim 24 and adds further limitations thereto, the Examiner has additionally cited the passage from Col. 17, line 50-Col. 18, line 6. The cited passage state that a tune may be repetitively transmitted. There is not, however, any mention of a request for repeated transmission of the tune. Clearly the passage does not anticipate the claim which expressly recites a request component for requesting a repeat transmission. Similarly the cited passage from Col. 19, lines 10-45 states, at lines 23-24, that messages are signaled periodically and repetitively. However, the passage makes no mention of a request component for requesting a repeat transmission. Accordingly, it cannot be maintained that the Inoue patent anticipates the invention as claimed.

With regard to the obviousness rejections of Claims 4-8, 9, 10, 14-15, 18 and 20-23, Applicants rely on analysis presented above with respect to the teachings of the Yeo and

Inoue patents. Applicants reiterate that the Yeo patent does not teach or suggest means or steps for creating a schedule for delivery of secondary content with the non-cyclic delivery of primary content and does not teach or suggest means or steps for the cyclic delivery of secondary content based on that schedule. Further, it is respectfully argued that none of the additionally cited art teaches or suggests those features which are missing from the Yeo patent. While the Examiner concludes that "the Inoue reference discloses dynamically modifying the schedule by adjusting the schedule based on the viewer's interaction", Applicants can find no teachings in the cited Inoue passages that describe adjusting a delivery schedule based on viewer interaction, generating a retransmission request, or generating a request based on viewer profile information. Appellants contend that obviousness cannot be maintained without some teaching or suggestion of the claim features.

The Federal Circuit has stated that when patentability turns on the question of obviousness, the obviousness determination "must be based on objective evidence of record" and that "this precedent has been reinforced in myriad decisions, and cannot be dispensed with." (In re Lee, 277 F. 3d 1338, 1343 (Fed. Cir. 2002)). Moreover, the

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Federal Circuit has stated that "conclusory statements" by an Examiner fail to adequately address the factual question of motivation, which is material to patentability and cannot be resolved "on subjective belief and unknown authority" (Id. at 1343-1344). Since Inoue does not teach the claim features which are missing from Yeo, it cannot be concluded that the addition of Inoue to Yeo will result in the invention as claimed.

Claim 11 has been rejected based on Yeo in view of Mankovitz. Again, Applicants rely on the arguments set forth above regarding the teachings of Yeo. The Mankovitz patent shows icon display. However, the addition of Mankowitz to Yeo does not teach or suggest each and every claim feature of Claim 11, including all of the features of Claim 1 from which it depends.

Claim 9 has been rejected as unpatentable over Yeo in view of Inoue and Dureau. The Dureau patent teaches routing based on a number of requests but does not teach or suggest retransmission of secondary content based on a number of requests, let alone that feature of Claim 9 in addition to the features of Claims 8, 6, 5 and 1 from which Claim 9 depends.

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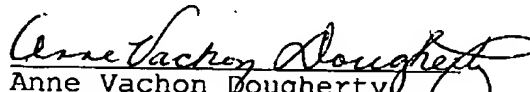
For a determination of obviousness, the prior art must teach or suggest all of the claim limitations. "All words in a claim must be considered in judging the patentability of that claim against the prior art" (In re Wilson, 424 F. 2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). If the cited references fail to teach each and every one of the claim limitations, a *prima facie* case of obviousness has not been established by the Examiner. Since the Yeo and Inoue references, alone or in combination with the teachings of Mankovitz and Dureau, do not teach the claim features, a *prima facie* case of obviousness has not been established.

Based on the foregoing amendments and remarks, Applicants request entry of the amendments, reconsideration of the rejections, withdrawal of the rejections, and issuance of the claims.

Respectfully submitted,

O. Casile, et al

By:


Anne Vachon Dougherty
Registration No. 30,374
Tel. (914) 962-5910

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